

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

NATIONAL ASSOCIATION
OF SECURITIES DEALERS, INC.

RECEIVED

MAY 27 1994

ARBITRATION-CHICAGO

In the Matter of the Arbitration Between

Name of Claimants

Rick Thorson, Rick Thorson as Representative of the
Estate of Shirley Thorson, deceased; Bruce Thorson and
Jerome Thorson

and

93-03117

Name of Respondent

Boettcher and Co.

REPRESENTATION OF PARTIES

Rick Thorson; Rick Thorson as Representative of the Estate of Shirley Thorson, deceased; Bruce Thorson and Jerome Thorson ("Claimants") were represented by Jeffrey J. Scott, Esq. of Krys Boyle Golz Reich Freedman Bean & Scott, P.C., Denver, Colorado.

Boettcher & Company, predecessor firm to Kemper Securities, Inc. ("Respondent") was represented by Don Andrews, Esq. of Kemper Securities, Inc., Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about August 9, 1993. Submission Agreement of Claimant Rick Thorson, individually and as Representative of the Estate of Shirley Thorson, deceased was signed on August 19, 1993. Submission Agreement of Claimant Bruce Thorson was signed on August 19, 1993. Submission Agreement of Claimant Jerome Thorson was signed on September 9, 1993.

Statement of Answer was filed by Respondent Boettcher & Company, predecessor firm to Kemper Securities, Inc. on or about October 20, 1993. Submission Agreement of Respondent Boettcher & Company, predecessor firm to Kemper Securities, Inc. was signed on October 18, 1993 by Don Andrews.

HEARING INFORMATION

A pre-hearing conference was held on Thursday, April 7, 1994 for one (1) session with Steven A. Meyrich, Esq. presiding.

The hearing was held on Tuesday, April 19, 1994 for two (2) sessions, Wednesday, April 20, 1994 for two (2) sessions, Wednesday, May 11, 1994 for two (2) sessions and Thursday, May 12, 1994 for two (2) sessions in Denver, Colorado for a total of one (1) prehearing conference and eight (8) hearing sessions.

CASE SUMMARY

Claimant alleged that during the period between March, 1989 through February, 1990, Page Thorson, in her capacity as an agent and employee of Respondent exercised control over the accounts of Claimants, and fraudulently and illegally removed funds from the accounts in the amount of \$96,512.62 and converted those funds to her own use, without the authority of the Claimants. It was further alleged that Page Thorson caused unsuitable investments to be made in the accounts and engaged in excessive trading in the accounts for the purpose of generating excessive commissions. Claimants also alleged that Respondent failed to adequately supervise Page Thorson.

The allegations in the Statement of Claim were denied by Respondents. Respondent stated that at all relevant times it had procedures in place for the remittance and delivery of checks and that those procedures were followed. that any circumvention of these procedures, if it occurred, would have been far out of the range of Page Thorson's employment with it. Respondent stated that this claim is striking given the fact that the Claimants received monthly account statements and other documentation which reflected the activity in the accounts and they made no complaints regarding the activities complained of in this matter. It was also stated that given the facts that Shirley Thorson, Bruce Thorson and Page Thorson were living in the same house and that Bruce, Rick and Jerome had been granted an extremely broad power of attorney over Shirley's assets it is more than plausible that Bruce Thorson would have been acutely aware of the nature of his mother's assets, including the brokerage account managed by his wife.

RELIEF REQUESTED

Claimants requested an award of actual damages for funds fraudulently converted in an amount to be proved at the hearing; actual damages for other losses sustained in their accounts in an amount to be proved at the hearing; punitive damages for the outrageous conduct, and the emotional distress and mental anguish, pain and suffering inflicted on Claimants; and treble damages, consequential damages, attorneys fees and costs of investigation and litigation reasonable incurred, pursuant to the Colorado Organized Crime Control Act; attorney's fees and costs, including expert witness fees.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the Arbitration Panel award the Claimants nothing. Additionally the Respondent requested that it be awarded all costs and expenses, including reasonable attorneys fees incurred in the defense of this frivolous and unsubstantiated matter.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of the Claimant's case in chief, Respondent asserted an Motion for a Directed Verdict. After considering the evidence presented to that point and the arguments of the parties, the undersigned arbitrators denied the motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the N.A.S.D.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Boettcher & Company, predecessor firm to Kemper Securities, Inc. shall be and hereby is liable for and shall pay to the Claimants Rick Thorson; Rick Thorson as Representative of the Estate of Shirley Thorson, deceased; Bruce Thorson and Jerome Thorson, jointly, the sum of Eighty two thousand four hundred eighteen dollars and eighty three cents (\$82,418.83) as compensatory damages.
2. Respondent Boettcher & Company, predecessor firm to Kemper Securities, Inc. shall be and hereby is liable for and shall pay to the Claimants Rick Thorson; Rick Thorson as Representative of the Estate of Shirley Thorson, deceased; Bruce Thorson and Jerome Thorson, jointly, the sum of Thirty five thousand two hundred eighty eight dollars and eighty cents (\$35,288.80) as interest on the above stated sum up to and including May 12, 1994.
3. Respondent Boettcher & Company, predecessor firm to Kemper Securities, Inc. shall be and hereby is liable for and shall pay to the Claimants Rick Thorson; Rick Thorson as Representative of the Estate of Shirley Thorson, deceased; Bruce Thorson and Jerome Thorson, jointly, the sum of Twenty five thousand dollars (\$25,000) as punitive damages. In awarding punitive damages, the arbitrators considered the Colorado Securities laws and Colorado statutes in determining that they have the authority to award such damages.
4. Respondent Boettcher & Company, predecessor firm to Kemper Securities, Inc. shall be and hereby is liable for and shall pay to the Claimants Rick Thorson; Rick Thorson as Representative of the Estate of Shirley Thorson, deceased; Bruce Thorson and Jerome Thorson, jointly, the sum of Forty nine thousand nine hundred forty seven dollars and sixty seven cents (\$49,947.67) as attorney's fees. In awarding attorney's fees, the

arbitrators considered the Colorado Securities laws and Colorado statutes in determining that they have the authority to make this award.


5. Respondent Boettcher & Company, predecessor firm to Kemper Securities, Inc. shall be and hereby is liable for and shall pay to the Claimants Rick Thorson; Rick Thorson as Representative of the Estate of Shirley Thorson, deceased; Bruce Thorson and Jerome Thorson, jointly, the sum of Two thousand four hundred four dollars and thirty cents (\$2,404.30) as costs. In awarding costs, the arbitrators considered the Colorado Securities laws and Colorado statutes in determining that they have the authority to award such damages.
6. Interest pursuant to Colorado statute is awarded on the sums stated in paragraphs one (1) through five (5) above from and inclusive of May 13, 1994 to and inclusive of the date this award is paid in full.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There were eight (8) sessions x \$600 = \$4,800 and one (1) session x \$300 = \$300 for a total of \$5,100 in forum fees. §43(b) states that a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited with the N.A.S.D. by the Claimant. Respondent shall be and hereby is liable for and shall pay to the NASD the sum of \$4,500 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:


Steven A. Meyrich, Esq.
Public Arbitrator, Presiding Chair

5/13/94

Joseph P. Natale
Public Arbitrator

Joseph M. Costello
Industry Arbitrator

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Dated:

Steven A. Meyrich, Esq.
Public Arbitrator, Presiding Chair

Joseph P. Natale
Joseph P. Natale
Public Arbitrator

Joseph M. Costello
Industry Arbitrator

May 19, 1994

arbitrators considered the Colorado Securities laws and Colorado statutes in determining that they have the authority to make this award.

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FORUM FEES

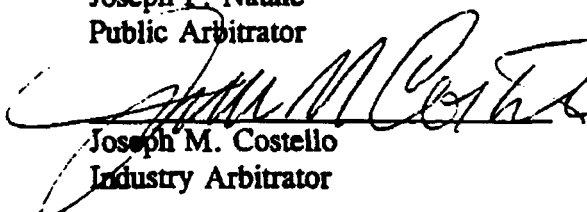
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Dated: _____

Steven A. Meyrich, Esq.
Public Arbitrator, Presiding Chair

Joseph P. Natale
Public Arbitrator


Joseph M. Costello
Industry Arbitrator

5/23/94